

REFERENCE TITLE: eminent domain; attorney fees; interest

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

SB 1362

Introduced by
Senators Gray C, Pearce R: Gould, Harper

AN ACT

AMENDING SECTIONS 12-1128, 12-1129 AND 12-1130, ARIZONA REVISED STATUTES;
RELATING TO EMINENT DOMAIN.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 12-1128, Arizona Revised Statutes, is amended to
3 read:

4 12-1128. Costs and jury fees
5 A. THE COURT MAY AWARD REASONABLE costs ~~may be allowed or not,~~ and
6 ATTORNEY FEES. If allowed, THE COURT ~~may be apportioned~~ APPORTION THE FEES
7 AND COSTS between the parties on the same or adverse sides, ~~in the discretion~~
8 ~~of the court.~~ THE COURT MAY AWARD THE PAYMENT OF INTEREST TO THE DEFENDANT
9 AT A RATE THAT IS EQUAL TO THREE PERCENTAGE POINTS ABOVE THE FEDERAL
10 POSTJUDGMENT INTEREST RATE IN EFFECT ON THE DATE JUDGMENT IS ENTERED.

11 B. The jury fee may be assessed or not against the plaintiff, in the
12 discretion of the court. If jury fees are so assessed, they shall be
13 calculated in the same manner and amounts as in other civil actions and the
14 plaintiff shall pay ~~such~~ THE fee to the clerk of the court for transmittal to
15 the county treasurer who shall dispose ~~such~~ OF THE monies in the same manner
16 as the disposition of other jury fees.

17 C. In an action for condemnation of property by or on behalf of an
18 educational, reformatory or penal institution of ~~the~~ THIS state, if the board
19 or officers having charge of the institution, ~~prior to~~ BEFORE commencement
20 of the action or proceeding, tender to the owner of the property such sum of
21 money as the board or officers deem the reasonable value of the property, and
22 the owner refuses to accept it and transfer the property, ~~then~~ all costs and
23 expenses of the action or proceeding shall be taxed against the owner unless
24 the sum of money assessed in the judgment as the value of the property and
25 compensation to be paid therefor is greater than the amount so tendered.

26 Sec. 2. Section 12-1129, Arizona Revised Statutes, is amended to read:
27 12-1129. Dismissal of condemnation action: litigation expenses

28 A. If a plaintiff causes a condemnation action under this article to
29 be dismissed without prejudice before payment of the compensation and damages
30 awarded the defendant by the court or jury, the plaintiff shall not initiate
31 any eminent domain proceeding with respect to the same property for the same
32 or a related project for at least two years after the date of the verdict or
33 judgment.

34 B. The court having jurisdiction of a condemnation action under this
35 article shall award the owner with any right to, title to or interest in the
36 property that is the subject of the action an amount that will reimburse the
37 owner for the owner's reasonable costs, disbursements and expenses, including
38 reasonable attorney, appraisal and engineering fees, actually incurred
39 because of the condemnation proceeding if ~~either~~ ANY of the following occurs:

40 1. The final judgment is that the plaintiff cannot acquire the real
41 property by condemnation.

42 2. The proceeding is abandoned on a motion by the plaintiff.

43 3. IF AFTER TRIAL, THE FINAL JUDGMENT FOR COMPENSATION TO THE
44 DEFENDANT IS TEN PER CENT MORE THAN THE PLAINTIFF'S LAST BEST WRITTEN OFFER
45 FOR COMPENSATION TO THAT DEFENDANT.

1 C. If the proceeding is dismissed on a motion by the plaintiff because
2 the parties have agreed to settle the matter out of court, both parties shall
3 pay their own costs, disbursements and expenses, including reasonable
4 attorney, appraisal and engineering fees unless otherwise specified by the
5 parties in the settlement agreement.

6 Sec. 3. Section 12-1130, Arizona Revised Statutes, is amended to read:
7 12-1130. Fees and expenses; appraisal; relocation benefits;
8 applicability

9 A. In a proposed condemnation action if an ~~owner-occupant of a~~
10 ~~residential property~~ OWNER OF THE REAL PROPERTY disagrees with the offer and
11 appraisal, the ~~owner-occupant~~ OWNER may obtain a second appraisal from an
12 appraiser who is on the approved list that is maintained by the governmental
13 entity and the governmental entity shall pay for the second appraisal.

14 B. Before filing an eminent domain action, the governmental entity
15 shall provide to the ~~owner-occupant~~ OWNER all appraisals of the property that
16 the governmental entity obtains.

17 C. Any IF A governmental entity ~~that~~ acquires owner-occupied
18 residential property by condemnation or threat of condemnation, THE
19 GOVERNMENTAL ENTITY shall provide the owner-occupant with a determination of
20 relocation benefits in an amount that allows the owner-occupant to purchase a
21 comparable replacement dwelling as provided under applicable relocation law.

22 D. In a condemnation action to acquire ~~owner-occupied residential~~ REAL
23 property, the court may award fees and other expenses to any party other than
24 this state or a city, town or county or any other political subdivision of
25 this state. In making the determination, the court may consider the amount
26 of the difference between the final offer and the compensation awarded, the
27 percentage of the difference between the final offer and the award and any
28 other factors the court deems appropriate. For the purposes of this
29 subsection, "fees and other expenses" means the reasonable expenses of expert
30 witnesses, the reasonable cost of any study, analysis, engineering report,
31 test or project that the court finds to be directly related to and necessary
32 for the presentation of the party's case and reasonable and necessary
33 attorney fees.

34 E. This section does not apply to actions for acquisition of property
35 for public safety, ~~transportation~~, flood control or utility purposes.